

U.S. DOL Proposes Delay of Conflict of Interest Rule and Related Exemptions

March 3, 2017

On March 1, 2017, the U.S. Department of Labor proposed a 60-day delay of the conflict of interest rule and related exemptions (currently set to be applicable on April 10, 2017). The Department opened two comment periods related to the rule:

- (1) A 15-day comment period (ending March 17, 2017) on whether enforcement of the rule should be delayed; and
- (2) A 45-day comment period (ending April 17, 2017) on the rule's substance.

The proposal and requests for comments relate to President Trump's Memorandum, issued on February 3, 2017, in which he directed the Department to examine the rule and related exemptions and prepare an updated economic and legal analysis concerning their likely impact, including:

- Whether the anticipated applicability of the final rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
- Whether the anticipated applicability of the final rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and
- Whether the rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The President directed that if the Department concludes for any reason that the rule and related exemptions are inconsistent with the Administration's priority "to empower Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies," then the Department must propose to rescind or revise the rule.

The proposed 60-day delay observes that the time required for the review directed by the February 3 Memorandum will extend past the rule's April 10 scheduled applicability date. Furthermore, the Department noted the potential for disruption and unnecessary compliance expenditures if the rule is allowed to go into effect when there is still a chance of rescission or significant revisions. The proposal also notes that a 60-day delay might not be sufficient for the Department to complete its work and requested comments on the impact of a longer delay – "6 months, a year, or more".

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View From Proskauer – While no one can predict the future, the proposed rule suggests that the Department is taking a close look at the rule and related exemptions and is prepared to delay the rule's applicability date until it is comfortable that the rule strikes an appropriate balance between regulatory burdens and protecting against conflicts of interest. Although the administration has made public statements denigrating the rule, the proposal suggests that full rescission is not a fait accompli. We expect to hear comments from diverse interests over the next 15 days, arguing for and against a delay of the applicability date. It also is reasonable to expect that the Department will wait to make final decision until after a Secretary of Labor is confirmed and leadership of the Employee Benefits Security Administration is in place, to allow the new leadership sufficient time to review the rule and its impact before starting to enforce it or proposing major changes (or full rescission).

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